REMARKS

Claims 1-5, 85-201, 260-263 were designated for prosecution in this application, and the remaining non-elected claims 6-84 and 202-259 are being retained in this application, unexamined, pending allowance of a generic or linking claim.

Rejected claim 262 has been cancelled without estoppel or disclaimer of the subject matter thereof.

Claims 260, 261, 263 have been rejected under the judicially-created doctrine of obviousness-type double patenting over claims 1-8 of U.S. Patent No. 6,599,313.

Applicant are again submitting herewith a copy of the Terminal Disclaimer executed on January 31, 2005 and previously filed in this application to obviate this basis for rejection of claims 260, 261, 263 which are therefore respectfully submitted to be patentable to Applicant.

That Terminal Disclaimer, referred to as filed on February 3, 2005 has been indicated not to be proper, allegedly for lack of capacity of the undersigned to sign that Terminal Disclaimer as an attorney of record. The basis for not accepting the Terminal Disclaimer for not being in proper order is respectfully traversed.

By Preliminary Amendment filed in this application on or shortly after August 31, 2004, a true copy of which is attached hereto marked Exhibit A, the succession of related patents and applications was amended to include citation to

the predecessor application Serial No. 09/475,789 from which the current application is a continuation.

In that application Serial No. 09/475, 789 there was filed on or shortly after June 7, 2001 a duly-executed Revocation and Substitute Power of Attorney that designated the undersigned as an attorney of record. True copies of this Substitute Power of Attorney and accompanying Certificate Under 37 CFR §3.73(b), are attached hereto marked as Exhibit B. It is therefore respectfully submitted that the undersigned attorney has power of attorney in application Serial No. 09/475,789 and in the current application as a continuation thereof. Accordingly, the U.S. Patent No. 6,599,313 was properly removed by the Terminal Disclaimer filed with fees in this application on February 5, 2005, a true copy of which is attached hereto marked as Exhibit C, and the claims 260, 261, 263 are therefore submitted to be patentable now to Applicant.

Rejected claims 2, 3 have been cancelled without estoppel or disclaimer of the subject matter thereof. Claims 1, 4 have been provisionally rejected under the judicially-created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3 and 5 of copending application 10/726,803 in view of Redtenbacher et al '847. This rejection is respectfully traversed.

Application Serial No. 10/726,803 is submitted not to be available as a reference upon which an obviousness-type double patenting rejection can be based because it is merely pending and not yet issued, if ever to issue, as a patent.

Accordingly, in the absence of such primary reference, Redtenbacher et al '847 alone (including at the cited passages in Cols. 3, 6, 7) fails to establish even a *prima facie* basis from which a proper determination of obviousness can be made. A terminal disclaimer may be submitted in the event application Serial No. 10/726,803 issued as a patent if required to overcome this basis for rejection. It is therefore respectfully submitted that claims 1, 4 are now patentable to Applicant in this application.

Claim 1 has be provisionally rejected under the judicially-created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of copending application No. 10/824,043 in view of Redtenbacher et al '847. This rejection is respectfully traversed.

The current claim 1 is devoid of the limitations recited in claim 1 of application Serial No. 10/824,043, and specifically recites endoscopic procedures for forming an anastomosis between a blood vessel and as blood-conveying conduit. These aspects of the claimed invention are submitted not to be met by the claim 1 of application Serial No. 10/834,043 in view of Redtenbacher et al '847, particularly its disclosure at the cited passages in cols. 3, 6, and 7.

In addition, application Serial No. 10/824,043 is submitted not to be available as a reference upon which an obviousness-type double patenting rejection can be based because it is merely pending and not yet issued, if ever to issue, as a patent. Accordingly, in the absence of such primary reference, Redtenbacher et al.

'847 alone (including the cited passages in Cols. 3, 6 and 7) fails to establish even a *prima facie* basis from which a proper determination of obviousness can be made. A terminal disclaimer may be submitted in the event application Serial No. 10/824,043 issues as a patent if required to overcome this basis for rejection. It is therefore respectfully submitted that claim 1 is now patentable to Applicant in this application.

Claim 191 has been objected to for lack of proper antecedent basis for recited terms. This claim has been amended in consideration of the Examiner's comments to obviate this basis for objection. As amended, claim 191 is now submitted to define the invention with sufficient particularity and distinctiveness to be patentable to Applicant.

Claim 261 has been rejected under 35 U.S.C. §102(e) as being anticipated by Wilk '861. This rejection is respectfully traversed with respect to this claim as amended herein.

This claim now specifically recites "guiding the distal end portion of said medical instrument through an opening formed in said circulatory system to extend a distal portion of said medical instrument outside of said circulatory system at a location thereon spaced from the working site and with a proximal portion of said medical instrument located within said circulatory system" and "advancing said implantable medical apparatus within said medical instrument toward said working site with said distal portion of said medical instrument located outside of said

circulatory system, and with said proximal portion of said medical instrument within said circulatory system."

This aspect of the claimed invention distinctly establishes that the distal portion of the medical instrument is outside the circulatory system as the implantable medical apparatus is advanced within the medical instrument toward the working site.

This aspect of the claimed invention is not disclosed or even suggested by Wilk '861 which bypasses an occlusion in a vessel by extending a catheter (20) within the vessel, through the occlusion, to a working site in the vessel, and in which the distal end of the catheter is not extended outside the circulatory system.

In contrast to the Examiner's analysis of this reference, a distal end of the intravascular catheter does not extend outside the circulatory system, and certainly not at a location spaced from the working site in a manner as claimed by Applicant. Quite to the contrary, Wilk '861 relies upon contiguous orientation of vessel wall and heart wall in the circulatory system to penetrate both walls at this one site or location from entirely within the vessel. It is therefore respectfully submitted that claim 261 is not anticipated by, but instead is patentably distinguishable over, Wilk '861.

Rejected claim 187-190, 192, 196, 197, 201 and 262 have been canceled without estoppel or disclaimer of the subject matter thereof.

Claims 186, 191, 193-195, 198-200, and 260 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Wilk '861. This rejection is respectfully traversed with respect to these claims as variously amended herein.

Independent claims 186 and 260 specifically recite "advancing the delivery device toward the anastomosis site from outside the vessel while the full length of the graft is contain in the delivery device," or "advancing a medical instrument upstream within a blood vessel of said body from a location downstream of the occluded segment" and "guiding a distal portion of said medical instrument through an opening formed in said blood vessel downstream of the occluded segment and spaced from said working site to extend the distal portion of said medical instrument outside a said blood vessel with a proximal portion of said medical instrument located within said blood vessel downstream of the occluded segment; and advancing said graft through said medical instrument to said working site at which said distal portion of said medical instrument is located outside of said blood vessel."

These aspects of the claimed invention distinctively define procedural steps that find no similarities or even any semblance of suggestion in Wilk '861. Contrary to the Examiner's assertion regarding downstream access, it should be noted that such access direction is clearly opposite the claimed access direction and requires, in Wilk '861, penetration of the vessel occlusion in order to form a graft or conduit to overcome the effect of that occlusion. This teaching away from

Applicant's claimed method offers no *prima facie* basis from which a proper determination of obviousness can be made.

Regarding the dependent claims, these claims are further limited by various specific recitations as amended herein to define the invention with greater particularity, including distinguishing recitation of the specific delivery device rather than a passageway, and including the distinguishing roll orientation of the graft in the delivery device. It is therefore respectfully submitted that claims 186, 191, 193-195, 198-201 and 260 are now patentably distinguishable over the cited art.

Rejected claims 87-89, 95, 100, 104, 106, 113, 115-118, 125, 130, 142-145, 151, 156, 158-161, 163, 167, 172, 174, 176, 180 and 185 have been cancelled without estoppel or disclaimer of the subject matter thereof.

Claims 85, 86, 97-99, 101-103, 110-112, 114, 121, 127-129, 141, 153-155, 157, 169-171, 173 and 182-184 have been rejected under 35 U.S.C. § 102(e) as being anticipated by Kaster '447. This rejection is respectfully traversed with respect to these claims as variously amended herein.

These claims variously recite "locating the blood-conveying conduit within a passageway of a delivery device; advancing the delivery device toward the anastomosis site from outside the vessel while the blood-conveying conduit is located within the passageway of the delivery device," or "during the removing step, the aorta attachment end is removed from the delivery device prior to removal

of said another vessel attachment end from the delivery device," or "the delivery sheath holds the graft in a configuration rolled about an axis aligned along the passageway of the delivery sheath," or "advancing the delivery sheath toward the opening with the distal end of the graft located within the distal end of the delivery sheath," or "both the aorta attachment end and said another vessel attachment end are advanced through the distal opening of the delivery device during the removing step," or "advancing a delivery device toward the anastomosis site from outside the vessel while a distal end of the graft is located within an interior space of the delivery device," or "during the removing step, the aorta attachment end is removed from the interior space of the delivery device prior to removal of said another vessel attachment end from the interior space."

These aspects of the claimed invention are not disclosed or even suggested by Kaster '447 which relies upon the distal end of a graft vessel being exposed outside the distal end of a mandrel for attachment to an anastomosis staple prior to advancing the assembly toward an opening in a target vessel. There is thus no disclosure here of the steps specifically recited in these claims which are therefore not anticipated by, but which are instead now patentably distinguishable as amended herein over Kaster '447.

Rejected claims 93, 94, 108, 124, 132, 134-136, 140, 149, 150, 165, 166, 178 and 179 have been cancelled without estoppel or disclaimer of the subject

matter thereof, and claim 131 has been amended to incorporate the subject matter of dependent claim 135.

Claims 123 and 131 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Kaster '447. This rejection is respectfully traversed.

Specifically, these claims variously recite "advancing the delivery sheath from outside the aorta", or "locating the graft in an interior space of an elongated delivery sheath in a configuration rolled about an axis substantially aligned along the elongated delivery sheath." These aspects of the claimed invention promote confinement of the blood-conveying graft within a delivery sheath of reduced outer diameter for convenient access to a surgical site in a patient with reduced trauma and tissue damage.

These aspects of the claimed invention are not disclosed or even suggested by Kaster '447 which is understood to rely upon the graft vessel 51 being fully deployed or expanded within the bore of the mandrel 16, with a distal end of the graft vessel disposed over the distal end of the mandrel prior to delivering the assembly including mandrel and staple and graft vessel to the anastomosis site. There is no disclosure or teaching contained in this reference alone that in any way suggests Applicant's claimed method. It is therefore respectfully submitted that claims 123 and 131 are now patentably distinguishable over Kaster '447.

Rejected claim 2-3, 96, 107, 109, 122, 126, 137, 148, 152, 164, 168, 177 and 181 have been cancelled without estoppel or disclaimer of the subject matter thereof.

Claims 1, 138 and 139 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Kaster '447 in view of Redtenbacher et al. '847 or Avant '039. This rejection is respectfully traversed.

These claims variously recite "endoscopically creating from outside the blood vessel an opening into the blood vessel at a selected location", or "locating the graft in an interior space of an elongated delivery sheath in a configuration rolled about an axis substantially aligned along the elongated delivery sheath", and "both the aorta attachment end and said another vessel attachment end are advanced through the distal opening of the delivery sheath during the removing step", and "both the aorta attachment end and said another vessel attachment end are advanced through the distal opening of the delivery sheath during the removing step".

These aspects of the claimed invention are not disclosed or even suggested by the cited references considered either alone or in the combination proposed by the Examiner. As the Examiner correctly notes, Kaster '447 fails to disclose the use of an endoscope or laparoscope in a process as claimed by Applicant. And, Redtenbacher et al. '847 merely describes a staple suturing instrument, without any disclosure or suggestion of the procedures by which an opening in a conduit (e.g.

an intestine) is formed. Similarly, Avant et al. '039 discloses a ligator assembly and procedure that are understood to be useful for inserting into a hollow tube-like body member (e.g., to ligate dorsal vein), to facilitate suturing the dorsal vein during a prostatectomy, but fails to disclosure the particular steps involved in connecting blood-conveying conduits in a manner as claimed by Applicant. Thus, merely combining these references fails to yield the steps or even resemble the process as claimed by Applicant. It is therefore respectfully submitted that claims 1, 138 and 139 are now patentably distinguishable over the cited art.

Claims 90, 92, 105, 119, 133, 146, 162 and 175 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Kaster '447 in view of Palmaz '665. This rejection is respectfully traversed with respect to these claims as amended herein.

These dependent claims now variously recite "by the locating step: a first end of the blood-conveying conduit is located at a first position within the passageway; a second end of the blood-conveying conduit is located at a second position spaced from the first position within the passageway; and a body of the blood-conveying conduit is interposed between the first position and the second position within the passageway," or "the blood-conveying conduit is positioned completely within the passageway of the delivery device."

These aspects of the claimed invention facilitate advancing a blood-conveying conduit toward a target vessel from outside the vessel in preparation for anastomosing the conduit to the vessel.

These aspects of the claimed invention are not disclosed or even suggested by the cited references considered either alone or in the combination proposed by the Examiner. Specifically, Kaster '447 relies upon an exposed and extended end of a grafting blood vessel (51) to overlay the distal end of mandrel (16), and be attached thereat to a staple (12) in preparations for guiding or advancing the whole assembly including the grafting vessel toward an opening in a target vessel.

Similarly, the grafting vessel is already preliminarily attached to the target vessel at the exposed end of the grafting vessel when the sleeve 13 is advanced to serve as an anvil for forming the staple into the wall of the target vessel about the hole therein. There is thus no disclosure, and certainly no motivation or instruction in this reference for retaining the blood-conveying vessel within the interior space of a delivery device, as the Examiner noted, in a manner as claimed by Applicant.

Nor is this deficient disclosure of Kaster '447 'cured' in view of the disclosure in Palmaz '665 of an expandable, intraluminally-deliverable graft (or stent). There, the graft is understood to be disposed outside the delivery device for expansion into place at a position within a body passage 80 that is established through intraluminal delivery, not via delivery outside the target vessel, in a manner as claimed by Applicant. Thus, a correction of the Examiner's analysis of

Palmaz '665 as delivering grafts to blood vessels is appropriate, since this reference more specifically discloses delivering grafts (stents) within blood vessels, not from outside the vessel, in a manner as claimed by Applicant. It is therefore respectfully submitted that merely combining these cited references nevertheless fails to establish even a *prima facie* basis including all recited steps of Applicant's claims from which a proper determination of obviousness can be made. Amended claims 90, 92, 105, 119, 133, 146, 162 and 175 are therefore submitted now to be patentable over the cited art.

Allowance of claim 5 is noted with appreciation.

The Examiner's responses to Applicant's previous arguments are noted and are believed to be overcome by current arguments in the above Remarks regarding Wilk '861 and claim 261 as amended herein.

The amendments to claims made herein are supported by the disclosure, for example, of Figures 10A, 10B, 11A, 12-15 and the associated written description.

Co-pending applications which may be considered to contain claims to similar or related subject matter as set forth herein include Ser. Nos. 09/903,831; 10/726,803; 10/731,068; and 10/824,043. Copies of the claims in these applications are believed to be available to the Examiner from stored images in the IFW system. In the event claims in these applications are not presently available, Applicant shall supply copies of unavailable claims, upon the Examiner's request,

by procedure that avoids incorporating such claims into the prosecution history of the present application.

Reconsideration and allowance of all elected claims (including claim 263 not discussed) are solicited. In the event the Examiner decides to continue the rejections, he is respectfully requested to enter this amendment in order to simplify and clarify the issues for appeal.

Respectfully submitted,
THOMAS J. MAGINOT

Dated: 6/8/05, 2005

By: A. C. Smith

Albert C. Smith, Reg. No. 20,355
Fenwick & West LLP
801 California Street
Mountain View, CA 94041
Telephone (650) 335-7296
Fax (650) 938-5200

ATTACHMENTS:

Exhibit A - Preliminary Amendment dated August 31, 2004
Exhibit B - Revocation and Substitute Power of Attorney dated June 7, 2001
Exhibit C - Terminal Disclaimer dated February 5, 2005

0001/PTO Rev. 10/95	U.S. Department of Commerce Patent and Trademark Office	Application Number	10/731,068
		Filing Date	December 8, 2003
TRANSMITTAL FORM *(to be used for all correspondence during pendency of filed application)*		First Named Inventor	Thomas J. Maginot
		Group Art Unit Number	3738
		Examiner Name	Not Yet Known
Total Number of Pages in This Submission	4	Attorney Docket Number	22220-08641

ENCLOSURES *(check all that apply)*

- ☐ Fee Transmittal Form (in duplicate)
 - ☐ Check Enclosed
- ☒ Return Receipt Postcard
- ☐ Response to Notice to File Missing Parts
- ☐ Assignment & Recordation Cover Sheet
- ☐ Declaration
- ☐ Power of Attorney
- ☐ Application Data Sheet
- ☐ Information Disclosure Statement & PTO/SB/08A
 - ☐ Copies of IDS Cited References
- ☐ Request for Corrected Filing Receipt
- ☐ Request for Correction of Recorded Assignment
- ☐ Amendment/Response: [] Page(s)
 - ☐ After Final
- ☐ Status Request
- ☐ Revocation and Substitute Power of Attorney
- ☐ Issue Fee Transmittal
- ☐ Letter to Chief Draftsperson
- ☐ Formal Drawing(s):
 - [] Sheet(s) of Figure(s) []
- ☐ Appeal Communication to Board of Appeals and Interferences
- ☐ Appeal Communication to Group *(Appeal Notice, Brief, Reply Brief)*
- ☐ Certified Copy of Priority Document(s)
- ☐ After Allowance Communication to Group
- ☒ Preliminary Amendment
- ☐ _____
- ☐ _____
- ☐ _____
- ☐ _____
- ☐ _____

REMARKS:

SIGNATURE OF ATTORNEY OR AGENT

Signature:	A. C. Smith		
Attorney/Reg. No.:	Albert C. Smith/Reg. No. 20,355	Dated:	8/23/04

CERTIFICATE OF MAILING

I hereby certify that this correspondence, including the enclosures identified above, is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below. If the Express Mail Mailing Number is filled in below, then this correspondence is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service pursuant to 37 CFR 1.10.

Signature:	A. C. Smith		
Typed or Printed Name:	Albert C. Smith	Dated:	8/23/04
Express Mail Mailing Number *(optional)*:			

EXHIBIT A

IN THE UNITED STATES

PATENT AND TRADEMARK OFFICE

APPLICANT:	Thomas J. Maginot
APPLICATION NO.:	10/731,068
FILING DATE:	December 8, 2003
TITLE:	Bypass Grafting Method
EXAMINER:	Not Yet Known
GROUP ART UNIT:	3738
ATTY. DKT. NO.:	22220-08641

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Mail Stop Amendment, Commissioner For Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the date shown below:

Dated: 8/23/04 By: A C Smith

Albert C. Smith, Reg. No.: 20,355

MAIL STOP AMENDMENT
COMMISSIONER FOR PATENTS
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450

PRELIMINARY AMENDMENT

Sir:

Prior to the examination of the application identified above, please amend this application as follows:

In the Specification:

Page 1, after the title, please substitute the following heading and paragraph:

--Related Cases

This application is a continuation of Application Serial No. 09/903,831, filed on July 11, 2001, entitled "Bypass Grafting Method", which is a continuation of 09/475,789, filed December 30, 1999, now U.S. Patent No. 6,599,313 which application is a continuation of co-pending Application Serial No. 09/111,062 filed July 7, 1998, which in turn is a continuation of co-pending Application Serial No. 09/090,598 filed June 4, 1998, now U.S. Patent No. 5,934,286, which in turn is a continuation of Application Serial No. 09/073,336, filed May 5, 1998, now U.S. Patent No. 5,979,455, which in turn is a continuation of Application Serial No. 08/702,742, filed August 23, 1996, now U.S. Patent No. 5,749,375, which in turn is a continuation of co-pending Application Serial No. 08/391,960, filed February 21, 1995, now U.S. Patent No. 5,571,167, which is in turn a continuation of Application Serial No. 08/138,912, filed October 18, 1993, now U.S. Patent No. 5,456,712, which is in turn a division of Application Serial No. 08/056,371, filed on May 3, 1993, now U.S. Patent No. 5,304,220, which in turn is a continuation-in-part of Application Serial No. 07/725,597, filed on July 3, 1991, now U.S. Patent No. 5,211,683.--

REMARKS

Applicant has amended the specification without adding any new matter merely to update the citation to related applications.

Favorable action is solicited.

Respectfully submitted,
THOMAS J. MAGINOT

Dated: 8/23/04 By: A. C. Smith

Albert C. Smith, Reg. No. 20,355
Fenwick & West LLP
801 California Street
Mountain View, CA 94041
Telephone (650) 335-7296
Fax (650) 938-5200

PTO/SB/21 (modified)
Approved for use through xx/xx/xx, OMB 0651-0031
Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

0001/PTO Rev. 10/95 U.S. Department of Commerce Patent and Trademark Office			
TRANSMITTAL FORM *(to be used for all correspondence during pendency of filed application)*		Application Number	09/475,789
		Filing Date	December 30, 1999
		First Named Inventor	Thomas J. Maginot
		Group Art Unit Number	Unknown
		Examiner Name	Unknown
Total Number of Pages in This Submission	5	Attorney Docket Number	22220-06047

ENCLOSURES ***(check all that apply)***

- ☐ Fee Transmittal Form (in duplicate)
 - ☐ Check Enclosed
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 - ☐ Copies of IDS Cited References
- ☐ Request for Corrected Filing Receipt
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 - ☐ After Final
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 - [] Sheet(s) of Figure(s) []
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- ☐ Certified Copy of Priority Document(s)
- ☐ After Allowance Communication to Group
- ☐ _____
- ☐ _____
- ☐ _____
- ☐ _____
- ☐ _____
- ☐ _____

REMARKS:

SIGNATURE OF ATTORNEY OR AGENT

Signature:			
Attorney/Reg. No.:	Albert C. Smith/Reg. No. 20,355	Dated:	June 7, 2001

CERTIFICATE OF MAILING

I hereby certify that this correspondence, including the enclosures identified above, is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, Washington, D.C. 20231 on the date shown below. If the Express Mail Mailing Number is filled in below, then this correspondence is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service pursuant to 37 CFR 1.10.

Signature:			
Typed or Printed Name:	Albert C. Smith	Dated:	June 7, 2001
Express Mail Mailing Number *(optional)*:			

EXHIBIT B

PATENT

IN THE UNITED STATES

PATENT AND TRADEMARK OFFICE

APPLICANT:	Thomas J. Maginot
APPLICATION NO.:	09/475,789
FILING DATE:	December 30, 1999
TITLE:	Extravascular Bypass Grafting Method Utilizing An Intravascular Approach
EXAMINER:	Unknown
GROUP ART UNIT:	Unknown
ATTY. DKT. NO.:	22220-06047

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner For Patents, Washington, D.C. 20231, on the date shown below:

Dated: 6/7/01 By: A. C. Smith

Albert C. Smith, Reg. No.: 20,355

COMMISSIONER FOR PATENTS
WASHINGTON, D.C. 20231

REVOCATION AND SUBSTITUTE POWER OF ATTORNEY

SIR:

The undersigned officer of Cardiothoracic Systems, Inc., assignee of record of the entire right, title and interest in and to the above-identified patent application, hereby revokes all prior powers of attorney previously appointed in the above-referenced application, and hereby appoints:

Name	Registration Number	Name	Registration Number
Albert C. Smith Deepti Panchawagh-Jain	20,355 43,846	Elaine Heal	44,149

as its attorneys to prosecute the above-referenced application and any continuing applications, to maintain the ensuing patent, and to transact all other business in the U.S. Patent and Trademark Office connected therewith.

Attached to this power is a Certificate under 37 CFR § 3.73(b).

Please direct all communication relative to the above-referenced application to the following new correspondence address:

Albert C. Smith
Fenwick & West LLP
Two Palo Alto Square
Palo Alto, CA 94306
Tel: (650) 858-7296
Fax.: (650) 494-1417

Respectfully submitted,
Cardiothoracic Systems, Inc.

Date: 6/4/01 Signature: [signature] II

Name: EARL BRIGHT

Title: ASST. SEC.

Atty. Dkt. No.: 06047

Certificate Under 37 CFR § 3.73(b)

Applicant:	Thomas J. Maginot
Application No.:	09/475,789
Filing Date:	December 30, 1999
Name of Assignee:	Cardiothoracic Systems, Inc.
Type of Assignee (e.g. corporation, partnership, university, government agency, etc.):	corporation

The above-mentioned Assignee certifies that it is the assignee of the entire right, title and interest in the patent application identified above by virtue of either:

A. ☐ An assignment from the inventor(s) of the patent application identified above. The assignment was recorded in the Patent and Trademark Office at Reel _____, Frame _____, or for which a copy thereof is attached; OR

B. ☒ A chain of title from the inventor(s), of the patent application identified above, to the current assignee as shown below:

1. From: Thomas J. Maginot
 To: Maginot Vascular Systems
 The document was recorded in the Patent and Trademark Office at
 Reel: 010496 and Frame: 0282, or for which a copy thereof is attached.

2. From: Maginot Vascular Systems
 To: Cardiothoracic Systems, Inc.
 The document was recorded in the Patent and Trademark Office at
 Reel: 011189 and Frame: 0816, or for which a copy thereof is attached.

3. From: _____
 To: _____
 The document was recorded in the Patent and Trademark Office at
 Reel: _____ and Frame: _____, or for which a copy thereof is attached.

☐ Additional documents in the chain of title are listed on a supplemental sheet.

☒ Copies of assignments or other documents in the chain of title are attached.

The undersigned has reviewed all the documents in the chain of title of the patent application identified above and, to the best of undersigned's knowledge and belief, title is in the assignee identified above.

The undersigned (whose title is supplied below) is empowered to sign this certificate on behalf of the assignee.

I hereby declare that all statements made herein of my own knowledge are true, and that all statements made on information and belief are believed to be true; and further, that these statements are made with the knowledge that willful false statements, and the like so made, are punishable by fine or imprisonment, or both, under Section 1001, Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

6/4/01
Date

Signature

EARL BRIGHT
Name

ASST. SEC.
Title

TERMINAL DISCLAIMER TO OBVIATE A DOUBLE PATENTING REJECTION OVER A PRIOR PATENT	Docket Number (Optional) 22220-08641

In re Application of: Thomas J. Maginot

Application Serial No.: 10/731,068

Filed: December 8, 2003

For: Bypass Grafting Method

The owner, CardioThoracic Systems, Inc.*, of the entire interest in the instant application hereby disclaims, except as provided below, the terminal part of the statutory term of any patent granted on the instant application, which would extend beyond the expiration date of the full statutory term defined in 35 U.S.C. 154 to 156 and 173, as presently shortened by any terminal disclaimer, of prior Patent No. 6,599,313. The owner hereby agrees that any patent so granted on the instant application shall be enforceable only for and during such period that it and the prior patent are commonly owned. This agreement runs with any patent granted on the instant application and is binding upon the grantee, its successors or assigns.

In making the above disclaimer, the owner does not disclaim the terminal part of any patent granted on the instant application that would extend to the expiration date of the full statutory term as defined in 35 U.S.C. 154 to 156 and 173 of the prior patent, as presently shortened by any terminal disclaimer, in the event that it later: expires for failure to pay a maintenance fee; is held unenforceable; is found invalid by a court of competent jurisdiction; is statutorily disclaimed in whole or terminally disclaimed under 37 CFR § 1.321; has all claims canceled by a reexamination certificate, is reissued, or is in any manner terminated prior to the expiration of its full statutory term as presently shortened by any terminal disclaimer.

Check either box 1 or 2 below, if appropriate.

1. ☐ For submissions on behalf of an organization (e.g. corporation, partnership, university, government agency, etc.), the undersigned is empowered to act on behalf of the organization.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further, that these statements are made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001, Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

2. ☒ The undersigned is an attorney of record. ✓

1/31/05
Date

A. C. Smith
Signature

Albert C. Smith, Reg. No. 20,355
Typed or printed name

☒ Terminal Disclaimer fee under 37 CFR 1.20(d) included

☒ Fee Transmittal included

☒ PTO suggested wording for terminal disclaimer was

☒ unchanged ☐ changed (if changed, an explanation should be supplied).

*Certificate under 37 CFR 3.73(b) is required if terminal disclaimer is signed by the assignee

EXHIBIT C